

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HAYMOUNT URGENT CARE PC, and
ROBERT A. CLINTON, JR.,
individually, and on behalf of all those similarly
situated,

Plaintiffs.

v.

GOFUND ADVANCE, LLC,
FUNDING 123, LLC,
MERCHANT CAPITAL LLC,
ALPHA RECOVERY PARTNERS, LLC,
YITZCHOK (“ISAAC”) WOLF,
JOSEF BREZEL,
JOSEPH KROEN, and
YISROEL C. GETTER,

Defendants.

Case No. 1:22-cv-01245-JSR

**DECLARATION OF RICHARD CIPOLLA IN SUPPORT OF
DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Richard Cipolla declares under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney with the law firm of Freedman Normand Friedland and counsel for Defendants GoFund Advance, LLC (“GFA”), Funding 123, LLC (“Funding 123”), Merchant Capital LLC (“Merchant Capital”), (collectively, the “Funders”), Alpha Recovery Partners, LLC (“Alpha”), Yitzchok Wolf, Yosef Brezel, and Joseph Kroen (with Alpha and the Funders, “Defendants”). This Declaration is given from my personal knowledge and my review of documents and records in this matter.

2. I submit this Declaration to provide the Court with true and correct copies of the following documents that Defendant has cited in its Memorandum of Law in Support of its Motion for Partial Summary Judgment.

3. Attached hereto as Exhibit 1 is a demonstrative titled “Summary of Contract Language and Outcomes from New York Cases Addressing Merchant Cash Advance Agreements.” This demonstrative summarizes recent illustrative cases from New York on merchant cash advance agreements and is not meant to be exhaustive or complete.

4. Attached hereto as Exhibit 2 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and Merchant Capital LLC, dated August 25, 2021.

5. Attached hereto as Exhibit 3 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and GoFund Advance LLC, dated August 26, 2021.

6. Attached hereto as Exhibit 4 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and GoFund Advance LLC, dated September 27, 2021.

7. Attached hereto as Exhibit 5 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and GoFund Advance LLC, dated December 16, 2021.

8. Attached hereto as Exhibit 6 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and Funding 123, LLC, dated December 27, 2021.

9. Attached hereto as Exhibit 7 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and GoFund Advance LLC, dated January 20, 2022.

10. Attached hereto as Exhibit 8 is a true and correct copy of transcript excerpts from the deposition of Yosef Brezel, dated September 2, 2022.

11. Attached hereto as Exhibit 9 is a true and correct copy of transcript excerpts from the deposition of Joseph Kroen, dated September 13, 2022.

12. Attached hereto as Exhibit 10 is a true and correct copy of transcript excerpts from the deposition of Robert A. Clinton, dated September 14, 2022.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from Plaintiffs' Responses to Defendants' First Set of Admission to Plaintiffs, dated August 29, 2022.

14. Attached hereto as Exhibit 12 is a true and correct copy of a Wells Fargo Bank Statement, bates-stamped HAY-0003343 through HAY-0003347, dated April 12, 2021.

15. Attached hereto as Exhibit 13 is a true and correct copy of a Wells Fargo Bank Statement, bates-stamped HAY-0003367 through HAY-0003374, dated September 16, 2021.

16. Attached hereto as Exhibit 14 is a true and correct copy of an email from R. Clinton, bates-stamped HAY-0003310 through HAY-0003322, dated February 8, 2022.

17. Attached hereto as Exhibit 15 is a true and correct copy of an email from World Global via DocuSign, bates-stamped HAY-0003067 through HAY-0003087, dated January 3, 2022.

18. Attached hereto as Exhibit 16 is a true and correct copy of transcript excerpts of the deposition of Yitzchok Wolf, dated September 6, 2022.

19. Attached hereto as Exhibit 17 is a true and correct copy of an email from Contracts BFC, bates-stamped GOFUND_000066975 through GOFUND_000066976, dated August 26, 2021.

20. Attached hereto as Exhibit 18 is a true and correct copy of an Addendum, bates-stamped GOFUND_000000011, dated December 16, 2021.

21. Attached hereto as Exhibit 19 is a true and correct copy of a Merchant Agreement between Haymount Urgent Care, P.C. and Regal Capital Inc., bates-stamped HAY-0005562 through HAY-0005576, dated December 17, 2020.

22. Attached hereto as Exhibit 20 is a true and correct copy of an email from Office Bridge, bates-stamped GOFUND_000019433 through GOFUND_000019456, dated November 1, 2021.

23. Attached hereto as Exhibit 21 is a true and correct copy of an email from Admin Funding, bates-stamped GOFUND_000020953 through GOFUND_000020953, dated February 18, 2022.

24. Attached hereto as Exhibit 22 is a true and correct copy of Purchase and Sale of Future Receivables, bates-stamped GOFUND_000062928 through GOFUND_000062938, dated January 20, 2022.

25. Attached hereto as Exhibit 23 is a true and correct copy of a Bank of America Bank Statement, bates-stamped HAY-0002323 through HAY-0002364, dated February 1, 2022 to February 28, 2022.

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from Plaintiffs' Second Supplemental Initial Disclosures, dated July 10, 2022.

27. Attached hereto as Exhibit 25 is a true and correct copy of a Letter from F. Zabokritsky, bates-stamped HAY-0009654 through HAY-0009669, dated February 15, 2022.

28. Attached hereto as Exhibit 26 is a true and correct copy of a Letter from K. Nemcheck, bates-stamped HAY-0009652, dated March 1, 2022.

29. Attached hereto as Exhibit 27 is a true and correct copy of an email from R. Clinton, bates-stamped HAY-0002818 through HAY-0002829, dated February 25, 2022.

30. Attached hereto as Exhibit 28 is a true and correct copy of an email from D. Gold, bates-stamped GOFUND_000063572 through GOFUND_000063581, dated March 15, 2022.

31. Attached hereto as Exhibit 29 is a true and correct copy of an email from A. Mirza, bates-stamped HAY-0002659 through HAY-0002660, dated March 16, 2022.

32. Attached hereto as Exhibit 30 is a true and correct copy of an email from K. Nemcheck, bates-stamped HAY-0002633 through HAY-0002637, dated March 25, 2022.

33. Attached hereto as Exhibit 31 is a true and correct copy of a Spreadsheet, bates-stamped HAY-0009944.

34. Attached hereto as Exhibit 32 is a true and correct copy of an email from A. Mirza, bates-stamped HAY-0002577 through HAY-0002579, dated May 17, 2022.

35. Attached hereto as Exhibit 33 is a true and correct copy of 100 demonstrative rows of a Spreadsheet attached to the email in exhibit 32, bates-stamped HAY-0009130, corresponding to HRSA payments. A full copy of the spreadsheet is available at the Court's request.

36. Attached hereto as Exhibit 34 is a true and correct copy of the unpublished case *Fox Capital Group, Inc., v. Superior Caregivers, LLC*, No. 613133/21 (Nassau Cnty. Sup. Ct. Jul 25, 2022).

37. Attached hereto as Exhibit 35 is a true and correct copy of the unpublished case *Merchant Capital v. Resurgence California LLC*, Index No. 130964-2021 (Oct. 3, 2022).

38. Pursuant to search terms proposed by Plaintiffs on August 5, 2022, Defendants implemented the search terms "usury", "loan", and "unlawful" (among others) when looking to identify responsive documents in response to Plaintiffs' document requests. Defendants have produced over 14,000 documents to date.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: February 13, 2023
New York, N.Y.

/s/ Richard Cipolla
Richard Cipolla